BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

AIRCRAFT SERVICE INTERNATIONAL INC., (AIRCRAFT SERVICE INTERNATIONAL GROUP (ASIG)), SIGNATURE FLIGHT SUPPORT, INC.

Employer

and Case 19-RD-3515

GEORGE HAMILL, an Individual

Petitioner

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS DISTRICT LODGE NO. 160 [1]

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The labor organization involved does not claim to represent certain employees of the Employer.

[1] The name of the Union appears as amended at hearing.

[2] The Union filed a brief, which has been considered.

3. A question affecting commerce does not exist concerning the representation of the subject employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.[3]

FACTS

Introduction:

Signature Flight Support, Inc. (hereinafter "Signature") operates a national refueling and service business, serving commercial and private planes at airports across the country. At all material times, Signature has maintained an operation at SeaTac International Airport in SeaTac, Washington. Fuelers fill airplanes with fuel from fuel trucks, and mechanics service the trucks and fueling equipment owned by Signature. Signature refers to its service of non-commercial aircraft as its "Fixed Base Operations" or "FBO." The service of commercial airlines' planes is hereinafter referred to as "commercial" service. Until January 1, 2002 Signature provided both commercial and FBO services at its operation at SeaTac. The employees have historically been unrepresented; Petitioner asserts they now *are* represented.

Aircraft Service International, Inc., also referred to as "Air Services International Group," (hereinafter "ASIG") is also engaged in the business of aircraft refueling and servicing, and at all material times has had an operation at SeaTac, servicing commercial aircraft. ASIG has not conducted FBO business at SeaTac. ASIG's (relevant) employees have historically been represented by the Union.

On October 1, 2001, Signature's parent, a holding company ("BBA England") or similar sub-entity, acquired ASIG. ASIG and Signature intended to merge their SeaTac operations as of January 1, 2002. Pursuant to that merger, all operations pertaining to commercial airline refueling at SeaTac were to be performed by ASIG, and all FBO work at SeaTac was to be performed by Signature.[4] Signature's commercial fuelers and mechanics are to be reassigned to ASIG. However, the record reflects that as of January 28, 2002, the transition to fully merged operations had not been completed.

ASIG fuelers and mechanics have been historically represented by the Union, and are governed by a current collective bargaining agreement. District Lodge 160 was certified by the NLRB as the representative of these ASIG employees on December 31, 1998. Signature employees have historically been unrepresented. Signature's former commercial services employees remain unrepresented at present, whether part of Signature or part of ASIG (the record was unclear on this point).

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[3] I raised the issue of whether the Employer falls under the jurisdiction of the NLRB, prior to the hearing. I find it unnecessary to decide this issue at this point, and explicitly decline to do so. I do conclude, however, that statutory jurisdiction does not lie simply by desire or fiat of the parties. This is not a matter of discretionary jurisdiction; rather, a matter of whether the Act, as a matter of law, covers these employees.

[4] All references are to SeaTac employees and SeaTac operations, unless otherwise specified.

On January 15, 2002, Petitioner, George Hamill, filed the instant petition for a decertification vote among all ASIG fuelers, mechanics and general aviation service employees formerly employed by Signature. Whether those employees appear "on the books" as employed by Signature or by ASIG currently remains unclear.

Preliminary Matters

District Lodge 160 has filed a "Motion to Transfer of [sic] Case to the NLRB for Decision" and has also filed a "Request for Permission [of the Regional Director] to Appeal Ruling of Hearing Officer [directly to the Board]." District Lodge 160's former Motion essentially requests a ruling from the *Board* (as opposed to the NMB) regarding whether jurisdiction lies under the NLRA or the RLA. The latter Motion raises the issue of whether a QCR lies herein. Because I find that the petition should be dismissed, I do not reach the jurisdictional issue.[5] The former Motion is now moot since (infra) I find that no QCR exists.

Analysis

In order to conduct a decertification election, there must be a valid question concerning representation. For a valid question concerning representation to exist in a decertification context, there must either be certification or a valid recognition of a union under Section 9(c)(1) of the Act. Where there has been a valid recognition, the Board will conclude that no question concerning representation exists, because of a recognition bar. *See, e.g., Josephine Furniture Company, Inc.*, 172 NLRB 404 (1968); *Abraham & Sons, Inc.*, 193 NLRB 523 (1971) (recognition may be found invalid (to a limited extent) where showing of majority support by the newly-recognized union was lacking); *Keller Plastics Eastern Inc.,* 157 NLRB 583 (1966).

Although the Petition identifies the voting unit as including those ASIG employees formerly employed by Signature, it appears that there has never been any certification or recognition of District Lodge 160 as the representative of such employees.[6] [7]

Petitioner contends that District Lodge 160 has received de facto recognition from ASIG as the representative of the newly acquired (or to-be-acquired) Signature

[5] Although it is not necessary that I reach the issue of referral to the NMB, I note that the record testimony demonstrates a history of certification before the NLRB, both at SeaTac and other airport locations for the two employers at issue here. The record contains no information regarding whether the NMB has ever exercised jurisdiction over either employer under the RLA.

[6] There may be some question as to whether the ex-Signature employees would constitute a proper accretion to the existing ASIG unit. However, as there has been no UC petition filed, this is not the proper forum to assess whether accretion would be appropriate in the present situation. I note that if there is a later accretion, an unfair labor practice charge would be the vehicle to challenge such accretion.

[7] No party contends that there has been any showing of majority support for District Lodge 160 among the "Signature" employees.

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employees. Petitioner points to two letters and several not-very-specific conversations in support of his position. I address each here.

The first letter Petitioner relies on is from ASIG and is addressed only to ASIG employees, although testimony indicates that the letter was also posted in the Signature employees' break room. Although the ASIG letter makes reference to upcoming "negotiations" with District Lodge 160, the letter also addresses three other points concerning common terms and conditions of work such as uniforms, safety and equipment use, of significance to both ASIG and Signature employees. Although the ASIG letter includes a reference to the *represented* employees' upcoming negotiations, it is understandable why the letter would be posted in the Signature break room, since the remaining matters would be of interest to Signature employees as well, independent of any reference to ASIG's negotiations with District Lodge 160.

The second letter Petitioner relies on is from District Lodge 160 to Signature employees, and it specifically addresses the merger and upcoming negotiations. Based on my review of the Union's letter, it is understandable that Petitioner would interpret its text as indicating that the Union had already received some tacit recognition as the representative of all ASIG employees after the merger, with details remaining to be negotiated. However, unrebutted testimony at the hearing clarified that (1) there has been no recognition extended by ASIG to the Union as the representative of former Signature employees; (2) there has been no demand for recognition by the Union for such employees, and (3) ASIG representatives have explicitly told the Union representatives that ASIG would not recognize the Union as the representative of the ex-Signature employees without a demonstration of majority support. Thus, although the Union's letter creates a distinctly different impression, I find that the letter does not mean what it seems to say, but was more likely inartfully drafted by someone who may not have been fully familiar with the law, or the facts, or perhaps by someone who was exhibiting some wishful thinking, or salesmanship.

Finally, Petitioner offered testimony about several non-specific conversations he had with representatives of District Lodge 160 and other unnamed individuals. On the basis of that testimony, it appears that Signature fuelers and mechanics were involved in a prior organizing campaign with an unspecified Teamsters local in October 2001. Although the record is less than clear, it appears that with AFL-CIO involvement[8], the Teamsters decided to walk away from the organizing campaign at Signature, leaving the potential organizing opportunity to District Lodge 160. Based on these conversations, it is understandable that Petitioner might misinterpret the AFL-CIO's involvement or decision as a "recognition" of the Union. However, there is no showing that *ASIG* ever recognized the Union as the bargaining representative of the former Signature employees at issue here, whatever the AFL-CIO's position. While the AFL-CIO could order "Teamsters" (an AFL-CIO affiliate) to "back off," and reserve the

[8] Petitioner's testimony suggests that there may have been an Article XX determination or similar action which caused the Teamsters to relinquish their involvement with the Signature employees.

"territory" to Machinists (also an AFL-CIO affiliate), the AFL-CIO has no authority over the Employer. Moreover, there is no evidence that the Employer has recognized, or agreed to recognize, the Union as representative of the "Signature" employees. To the contrary, the Employer denied that a demand or recognition had taken place. The only "evidence" of such is the Union's hearsay statement in the second letter.

This is a representation matter. I lack authority to make credibility resolutions based on demeanor. I note that there is no *evidence* that the Employer has granted recognition. The Employer's letter does not so indicate. The Union's letter is hearsay as to the Employer, and is not evidence that the *Employer* has granted recognition, although it is an arguable admission by the Union. The AFL-CIO's actions in no way indicate recognition by the Employer; at most they indicate that as far as the AFL-CIO is concerned, the "field is open" to the Union to pursue the same. On the basis of the above, I find that the prerequisites for a question concerning representation are not met, and I shall dismiss the petition.[9]

ORDER

The Petition is hereby dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by March 5th, 2002.

DATED at Seattle, Washington, this 19th day of February 2002.

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Paul Eggert, Regional Director
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316-3301-5000
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[9] In the event that facts come to light which demonstrate that there *had* been actual recognition prior to the close of the hearing herein, notwithstanding the testimony to the contrary, I will entertain a prompt request by the Petitioner to reopen this petition.